

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD J. NICHOLAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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CIVIL NO. 4:CV-06-2046

(Judge Caputo)

M E M O R A N D U M

I. Background.

Petitioner, Edward J. Nicholas, an inmate at the State Correctional Institution in Albion, Pennsylvania, commenced this civil action by filing a *pro se* Petition For Writ of Mandamus. Petitioner also filed a Motion for Leave to Proceed *in forma pauperis* (Doc. 2). The Petition is the latest in a string of civil actions challenging alleged improprieties in Petitioner's criminal proceedings in the Dauphin County, Pennsylvania, Court of Common Pleas, criminal docket # 3685 of 1997 ("3685 cd 97"). Petitioner alleges obstruction of justice, malicious prosecution, conspiracy, jury rigging/tampering, withholding evidence, obstruction of appellate rights, infliction of emotional distress, and legal malpractice. (Doc. 1 at 1-3.). Petitioner seeks intervention by this Court or "some direction as to how to deal with the legal malpractice of these officials . . . [and] any certification of law that may apply to this circumstance to assist the issues merits [sic] receiving an evidentiary hearing." (*Id.* at 3.) For the reasons that follow, the Petition will be dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(g), and the Motion to Proceed *in forma pauperis* will be denied.

II. Discussion.

Under the provisions of 28 U.S.C. § 1915(g), a federal civil action by a prisoner

proceeding *in forma pauperis* is barred if he or she has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Since the beginning of this year, Petitioner has filed three (3) previous civil rights actions which were dismissed by this Court on ground that they were frivolous. See *Nicholas v. Evans*, Civil No. 4:06-CV-1414 (M.D. Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Evans*, Civil No. 4:06-CV-1478 (M.D. Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Evans*, Civil No. 4:06-CV-1541 (M.D. Pa. Oct. 3, 2006) (Caputo, J.). All of these cases were commenced by Petitioner while he was incarcerated. Petitioner's instant allegations relate to claims of impropriety in his preliminary hearing, trial, conviction, and sentence in 3685 cd 97. There is no allegation or indication that this inmate is in danger of imminent serious physical injury. Thus, the above-captioned action is barred, and it will be dismissed under § 1915(g). An appropriate Order follows.

Dated: October 20, 2006.

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge

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ORDER

AND NOW, THIS 20th DAY OF OCTOBER, 2006, in accordance with the foregoing
Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Petitioner's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) is
DENIED.
2. The Petitioner For Writ of Mandamus (Doc. 1) is **DISMISSED**, without
prejudice, pursuant to the provisions of 28 U.S.C. § 1915(g).
3. The Clerk of Court is directed to close this case.
4. Any appeal taken from this Order will be deemed frivolous, without probable
cause, and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge